

REFERENCE TITLE: mental health services; information disclosure

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

SB 1442

Introduced by
Senator Barto

AN ACT

AMENDING SECTION 36-509, ARIZONA REVISED STATUTES; RELATING TO MENTAL HEALTH SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 36-509, Arizona Revised Statutes, is amended to
3 read:

4 36-509. Confidential records; immunity

5 A. A health care entity must keep records and information contained in
6 records confidential and not as public records, except as provided in this
7 section. Records and information contained in records may only be disclosed
8 to:

9 1. Physicians and providers of health, mental health or social and
10 welfare services involved in caring for, treating or rehabilitating the
11 patient.

12 2. Individuals to whom the patient or the patient's health care
13 decision maker has given authorization to have information disclosed.

14 3. Persons authorized by a court order.

15 4. Persons doing research only if the activity is conducted pursuant
16 to applicable federal or state laws and regulations governing research.

17 5. The state department of corrections in cases in which prisoners
18 confined to the state prison are patients in the state hospital on authorized
19 transfers either by voluntary admission or by order of the court.

20 6. Governmental or law enforcement agencies if necessary to:

21 (a) Secure the return of a patient who is on unauthorized absence from
22 any agency where the patient was undergoing evaluation and treatment.

23 (b) Report a crime on the premises.

24 (c) Avert a serious and imminent threat to an individual or the
25 public.

26 7. Persons, including family members, ~~actively participating FRIENDS~~
27 ~~OR OTHERS INVOLVED~~ in the patient's care, treatment or supervision. ~~A health~~
~~care provider may only release information relating to the patient's~~
~~diagnosis, prognosis, need for hospitalization, anticipated length of stay,~~
~~discharge plan, medication, medication side effects and short term and~~
~~long term treatment goals. A health care provider may make this release only~~
~~after the treating professional or that person's designee interviews the~~
~~patient or the patient's health care decision maker and the patient or the~~
~~patient's health care decision maker does not object, unless federal or state~~
~~law permits the disclosure. If the patient does not have the opportunity to~~
~~object to the disclosure because of incapacity or an emergency circumstance~~
~~and the patient's health care decision maker is not available to object to~~
~~the release, the health care provider in the exercise of professional~~
~~judgment may determine if the disclosure is in the best interests of the~~
~~patient and, if so, may release the information authorized pursuant to this~~
~~paragraph. A decision to release or withhold information is subject to~~
~~review pursuant to section 36-517.01. The health care provider must record~~
~~the name of any person to whom any information is given under this paragraph.~~
A RELEASE OF INFORMATION UNDER THIS PARAGRAPH MUST MEET THE REQUIREMENTS

1 PRESCRIBED IN SUBSECTION B OF THIS SECTION AND DOES NOT INCLUDE INFORMATION
2 RELATED TO SUBSTANCE ABUSE TREATMENT RECORDS OR PSYCHOTHERAPY NOTES.

3 8. A state agency that licenses health professionals pursuant to title
4 32, chapter 13, 15, 17, 19.1 or 33 and that requires these records in the
5 course of investigating complaints of professional negligence, incompetence
6 or lack of clinical judgment.

7 9. A state or federal agency that licenses health care providers.

8 10. A governmental agency or a competent professional, as defined in
9 section 36-3701, in order to comply with chapter 37 of this title.

10 11. Human rights committees established pursuant to title 41,
11 chapter 35. Any information released pursuant to this paragraph shall comply
12 with the requirements of section 41-3804 and applicable federal law and shall
13 be released without personally identifiable information unless the personally
14 identifiable information is required for the official purposes of the human
15 rights committee. Case information received by a human rights committee
16 shall be maintained as confidential. For the purposes of this paragraph,
17 "personally identifiable information" includes a person's name, address, date
18 of birth, social security number, tribal enrollment number, telephone or
19 telefacsimile number, driver license number, places of employment, school
20 identification number and military identification number or any other
21 distinguishing characteristic that tends to identify a particular person.

22 12. A patient or the patient's health care decision maker pursuant to
23 section 36-507.

24 13. The department of public safety or another law enforcement agency
25 by the court to comply with the requirements of section 36-540, subsections O
26 and P.

27 14. A ~~third-party~~ THIRD-PARTY payor or the payor's contractor as
28 permitted by the health insurance portability and accountability act privacy
29 standards, 45 Code of Federal Regulations part 160 and part 164, subpart E.

30 15. A private entity that accredits the health care provider and with
31 whom the health care provider has an agreement requiring the agency to
32 protect the confidentiality of patient information.

33 16. The legal representative of a health care entity in possession of
34 the record for the purpose of securing legal advice.

35 17. A person or entity as otherwise required by state or federal law.

36 18. A person or entity as permitted by the federal regulations on
37 alcohol and drug abuse treatment (42 Code of Federal Regulations part 2).

38 19. A person or entity to conduct utilization review, peer review and
39 quality assurance pursuant to section 36-441, 36-445, 36-2402 or 36-2917.

40 20. A person maintaining health statistics for public health purposes
41 as authorized by law.

42 21. A grand jury as directed by subpoena.

43 22. A person or entity that provides services to the patient's health
44 care provider, as defined in section 12-2291, and with whom the health care
45 provider has a business associate agreement that requires the person or

entity to protect the confidentiality of patient information as required by the health insurance portability and accountability act privacy standards, 45 Code of Federal Regulations part 164, subpart E.

B. THE REQUIREMENTS FOR THE RELEASE OF INFORMATION BY A HEALTH CARE PROVIDER OR HEALTH CARE ENTITY PURSUANT TO SUBSECTION A, PARAGRAPH 7 OF THIS SECTION ARE AS FOLLOWS:

1. IF IT IS DETERMINED THAT THE PATIENT IS CAPABLE OF AGREEING TO THE SHARING OF THE INFORMATION AND IF, AFTER THE HEALTH CARE PROVIDER DISCUSSES THE REQUESTED RELEASE WITH THE PATIENT, THE PATIENT CONSENTS, THE INFORMATION SHALL BE RELEASED.

2. IF THE PATIENT IS DETERMINED TO BE CAPABLE OF AGREEING BUT IS UNABLE TO COMMUNICATE CONSENT, OR IF THE PATIENT HAS BEEN GIVEN THE OPPORTUNITY TO OBJECT AND DOES NOT EXPRESS AN OBJECTION, THE TREATING HEALTH CARE PROVIDER, BASED ON PROFESSIONAL JUDGMENT, MAY INFER FROM THE CIRCUMSTANCES THAT THE PATIENT DOES NOT OBJECT TO THE DISCLOSURE AND SHALL RECORD THE CIRCUMSTANCES RELIED ON TO MAKE THIS INFERENCE IN THE PATIENT'S MEDICAL RECORD.

3. IF THE PATIENT HAS A HEALTH CARE DECISION MAKER WHO PROVIDES DOCUMENTATION OF THAT PERSON'S AUTHORITY TO ACT AS A HEALTH CARE DECISION MAKER, THE HEALTH CARE PROVIDER OR HEALTH CARE ENTITY MAY RELY ON THE CONSENT OF THE HEALTH CARE DECISION MAKER. THE HEALTH CARE PROVIDER OR HEALTH CARE ENTITY MAY RELY ON THE DOCUMENTATION PROVIDED BY THE HEALTH CARE DECISION MAKER UNLESS THERE IS A REASON TO BELIEVE THE AUTHORITY IS NOT VALID OR HAS BEEN REVOKED.

4. IF THE PATIENT IS NOT PRESENT OR IF THE OPPORTUNITY TO AGREE OR OBJECT TO THE USE OR DISCLOSURE OF INFORMATION CANNOT PRACTICABLY BE PROVIDED BECAUSE OF THE PATIENT'S INCAPACITY OR AN EMERGENCY CIRCUMSTANCE, THE HEALTH CARE PROVIDER OR HEALTH CARE ENTITY MAY RELEASE THE INFORMATION REQUESTED IF THE PROVIDER OR ENTITY DETERMINES THAT THE RELEASE OF THE REQUESTED INFORMATION IS IN THE BEST INTEREST OF THE PATIENT AND, IF SO, SHALL DISCLOSE ONLY THE PROTECTED INFORMATION THAT IS DIRECTLY RELEVANT TO THE PERSON'S INVOLVEMENT WITH THE PATIENT'S HEALTH CARE. IN DETERMINING WHETHER THE RELEASE OF INFORMATION IS IN THE BEST INTEREST OF THE PATIENT, THE HEALTH CARE PROVIDER OR HEALTH CARE ENTITY SHALL CONSIDER BOTH OF THE FOLLOWING:

(a) THE PATIENT'S MEDICAL AND TREATMENT HISTORY, INCLUDING THE PATIENT'S HISTORY OF COMPLIANCE OR NONCOMPLIANCE WITH AN ESTABLISHED TREATMENT PLAN BASED ON INFORMATION IN THE PATIENT'S MEDICAL RECORDS AND ON RELIABLE AND RELEVANT INFORMATION RECEIVED FROM THE PATIENT'S FAMILY MEMBERS, FRIENDS OR OTHERS INVOLVED IN THE PATIENT'S CARE, TREATMENT AND SUPERVISION. IF A FAMILY MEMBER, FRIEND OR CAREGIVER IS AVAILABLE, THE HEALTH CARE PROVIDER OR HEALTH CARE ENTITY, IF POSSIBLE, SHALL INCLUDE ANY INFORMATION OFFERED BY THE FAMILY, FRIEND OR CAREGIVER BEFORE PROVIDING TREATMENT.

(b) WHETHER THE INFORMATION IS NECESSARY OR, BASED ON PROFESSIONAL JUDGMENT, WOULD BE USEFUL IN ASSISTING THE PATIENT IN COMPLYING WITH THE CARE, TREATMENT OR SUPERVISION PRESCRIBED IN THE PATIENT'S TREATMENT PLAN.

1 5. THE INFORMATION SHALL BE RELEASED IF PERMITTED OR REQUIRED BY
2 FEDERAL OR STATE LAW.

3 6. A HEALTH CARE PROVIDER OR HEALTH CARE ENTITY SHALL KEEP A RECORD OF
4 THE NAME AND CONTACT INFORMATION OF ANY PERSON TO WHOM ANY PATIENT
5 INFORMATION IS RELEASED.

6 7. A HEALTH CARE PROVIDER OR HEALTH CARE ENTITY SHALL INFORM ANY
7 INDIVIDUAL, INCLUDING THE PATIENT, WHO IS AFFECTED BY THE DECISION TO RELEASE
8 OR WITHHOLD INFORMATION OF THE RIGHT TO HAVE THE DECISION REVIEWED PURSUANT
9 TO SECTION 36-517.01.

10 **B.** C. Information and records obtained in the course of evaluation,
11 examination or treatment and submitted in any court proceeding pursuant to
12 this chapter or title 14, chapter 5 are confidential and are not public
13 records unless the hearing requirements of this chapter or title 14, chapter
14 5 require a different procedure. Information and records that are obtained
15 pursuant to this section and submitted in a court proceeding pursuant to
16 title 14, chapter 5 and that are not clearly identified by the parties as
17 confidential and segregated from nonconfidential information and records are
18 considered public records.

19 **C.** D. Notwithstanding subsections A, ~~and~~ B **AND C** of this section, the
20 legal representative of a patient who is the subject of a proceeding
21 conducted pursuant to this chapter and title 14, chapter 5 has access to the
22 patient's information and records in the possession of a health care entity
23 or filed with the court.

24 **D.** E. A health care entity that acts in good faith under this article
25 is not liable for damages in any civil action for the disclosure of records
26 or payment records that is made pursuant to this article or as otherwise
27 provided by law. The health care entity is presumed to have acted in good
28 faith. This presumption may be rebutted by clear and convincing evidence.